IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17323 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JITESHBHAI GOPALBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17323 of 2003

MS SHAMEEN QURESHI for MR MM TIRMIZI for Petitioner No. 1

MS P B SHETH AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 17/03/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order dated 25/09/03, passed by respondent no.2, for detaining the petitioner u/s.3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985, on the ground that the petitioner was involved in an offence punishable u/s.3, 4 and 5 of the Immoral Traffic Prevention Act, 1956 registered before Rander Police Station, Surat at C.R.No.389/2003 on 17/08/03.

2. The petitioner has challenged the above detention order on several grounds. One of the grounds taken by the petitioner is that after the detention order was passed and implemented, the mother of the detenu submitted a representation to respondent no.2 and there was delay in dealing with the same. Therefore, the further detention of the petitioner is illegal.

3. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.P B Sheth learned AGP has appeared on behalf of the respondents. The learned advocate for the petitioner submits a communication received by the petitioner from respondent no.2 dated 05/12/03. It is taken on record. I have heard the learned advocates for the parties and have perused the papers.

4. The learned advocate for the petitioner has contended that the petitioner had submitted a written representation on 02/12/03 to respondent no.2, that it was received by the Office of respondent no.2 on 03/12/03. The said Office forwarded it to the State Government on 05/12/03, since, the State Government had already approved the detention of the petitioner. Hence, the second respondent could not deal with and decide the same. The learned advocate for the petitioner has contended that though the representation was received on 03/12/03, it was not forwarded on the same day or on the next day, instead, it was forwarded on 05/12/03. Therefore, there was a delay in forwarding the same to the State Government.

5. The learned advocate for the petitioner has relied upon a decision of this Court dated 19/06/01 in S.C.A.No.12634/2000. The learned Single Judge (Coram : Hon'ble Mr.Justice H.K. Rathod) had referred to certain other decisions and had thereafter, held that, when there is a delay in forwarding the representation and when the said delay has not been explained, the further detention of the detenu cannot be termed as legal and valid. In the said decision, the learned Single Judge had taken

into consideration decisions reported in the cases of State of Punjab V/s. Sukhpal Singh : AIR 1990 SC 231 and Harish Pahwa V/s. State of U.P. & Ors. : AIR 1981 SC 1126. The learned Single Judge also considered a decision of this Court rendered in S.C.A.No.9664/1990 dated 16/03/2000.

6. After considering the said three decisions, the learned Single Judge came to a conclusion that delay in forwarding the representation was fatal to the order of detention and therefore, the order of detention was required to be quashed and set aside.

7. In view of the aforesaid decisions of the Hon'ble the Supreme Court as well as of this Court and considering the last mentioned decision dated 19/06/01, there is no room for taking a view different from the view adopted by the learned Single Judge in the aforesaid matter. Therefore, the impugned order of detention has to be held to be illegal and deserves to be quashed and set aside.

8. For the foregoing reasons, this petition is allowed. The impugned order of detention dated 26/09/03 passed against the detenu, is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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